

C) REMARKS

Claim Objections

The recitation “claim-shell heater” has been amended to recite “clam-shell heater.”

Claim Rejections – 35 U.S.C. § 112

Claim 3 stands rejected under 35 U.S.C. § 112 ¶2 as being indefinite. Claim 3 has been amended to eliminate the limitation “preferably.” Claim 11 has been added to the application. No new matter has been added.

Claim Rejections – 35 U.S.C. § 103

Claims 1, 2, 5 and 9 stand rejected as being obvious in view of the disclosure of WO 02/0677737 (“Damiano”) in view of U.S. Patent No. 4,911,938 to Fisher (“Fisher”). Damiano discloses an apparatus and method for rapidly heating a packaged food product which has a heating container with heating elements 30, 31 and 32 which apply heat to a food product placed therein. The food container taught by Damiano must be a shape complementary to the heating container as illustrated, for example, in Figs. 5 and 6. In order to provide a container of complementary shape, Damiano necessarily teaches a substantially rigid container. As a result, this container is not suitable for use in a clam shell heater of the type defined in by the claimed invention. The container of the claimed invention must have flexibility so as to be lightly compressed by the plates of the heater.

In applicant’s view, the Examiner has taken the position that the heating housing in Damiano could reasonably constitute a clam shell heater. Applicant respectfully submits that the term “clam shell heater” has a very specific meaning in the art which is not met by the heating housing in Damiano. Instead, the heating housing in Damiano is a proprietary system which requires the food to be housed within a container of specific shape and does not constitute a clam

shell heater as would be recognized by the skilled reader in the art. However, in order to more particularly identify the claimed invention, the word "flexible" has been added between the words "a package" on line 3 of claim 1 to further distinguish the claimed invention from Damiano.

As acknowledged by the Examiner, Damiano fails to disclose pre-forming a food-product having a substantially uniform pre-determined thickness and sealing the food portion into an envelope formed from a film to produce a package wherein at least one of the seals of the package is peelable under conditions of elevated temperature and pressure within the envelope to vent the envelope during heating.

The packaging of Fisher is microwave packaging and, despite the Examiner's discussion regarding the acceptable temperature range of that packaging, the microwave packaging would not maintain its integrity under sustained direct heating applied by conventional clam shell heating. Accordingly, even if these two documents were combined, a skilled person would not arrive at the method as defined in claim 1 because such a person would be aware that the microwave packaging would not withstand direct heating. Obviously, if a proposed modification would render the prior invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

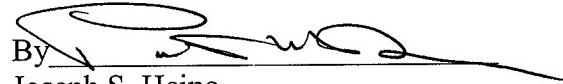
Further, one skilled in the art would not even try to combine the teaching of these two documents. Damiano requires a food container of the specific shape and size of the heating device, and, as a result, the skilled person would most certainly not use a container formed of a conformable film such as that disclosed in Fisher. Such a container obviously would be

incapable of maintaining its shape, an essential feature for operation of the invention disclosed by Damiano.

For these reasons, applicant respectfully submits that claim 1, as amended, is in fact inventive over the referenced combination of prior art on the grounds that the proposed substitution of a flexible material into use with the Damiano is a fundamental departure from the underlying teaching of Damiano which the skilled person would not obviously apply since it would stop that system from working in the manner it is intended.

As amended, all claims now presented are now believed to be in position for allowance. Allowance of all remaining claims is respectfully requested.

Respectfully submitted,

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